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Letter dated 21 June 1995 from the Permanent Representative of Peru to the United Nations addressed to the Secretary-General

I have the honour to refer to the letter dated 8 May 1995 addressed to you by the Permanent Representative of Ecuador to the United Nations (A/49/899-S/1995/365).

In the penultimate paragraph of the aforementioned letter, the Permanent Representative of Ecuador states:

> "(g) The Government of Ecuador considers that the Itamaraty and Montevideo Declarations constitute an important and, so far, successful contribution to the end of confrontations in Alto Cenepa. Nevertheless, the normalization of relations between Ecuador and Peru will still require additional efforts. Unfortunately, the two countries still differ with regard to territorial matters owing to legal shortcomings and the impossibility of implementing the 1942 Rio de Janeiro Protocol in one geographic sector. In this regard, I am pleased to inform you that Ecuador is prepared, as it always has been, to discuss ways of solving the problem with a view to promoting the peaceful and final settlement of its disputes with Peru."

With regard to this letter from Ecuador, my Government wishes to clarify and place on record the following:

(a) The territorial dispute between Peru and Ecuador was definitively settled with the signing in Rio de Janeiro, on 29 January 1942, of the Peruvian-Ecuadorian Protocol of Peace, Friendship and Boundaries, to which Argentina, Brazil, Chile and the United States of America, in their capacity as guarantor countries, also subscribed. The Protocol was freely adopted by the Congresses

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of Peru and Ecuador, and the exchange of the instruments of ratification took place at Petropolis, Brazil, on 31 March 1942, in the presence of the President of Brazil and the representatives of the other guarantor countries.

(b) In implementation of the Protocol, between 1942 and 1951, the Combined Peruvian-Ecuadorian Border Demarcation Commission placed boundary markers along more than 90 per cent of the boundary established in accordance with article 8 of the aforementioned Protocol.

(c) The disagreements that arose in the course of demarcation were resolved by the Aranha formula of 1944 and the 1945 ruling of the arbitrator, Días de Aguiar, in compliance with which the demarcation of the common boundary continued until 1951. In that year Ecuador withdrew from the Combined Border Demarcation Commission claiming that it was impossible to implement the Rio de Janeiro Protocol, the very issue that had been settled by the arbitral ruling of Días de Aguiar, which had been formally accepted by both countries and largely implemented.

(d) In 1960, once again changing its position with regard to the Rio de Janeiro Protocol, Ecuador unilaterally declared the Protocol to be null and void. Ecuador's position was immediately rejected by the guarantor countries, which unanimously demanded in a note dated 7 December 1960 that Ecuador should comply with the Protocol.

(e) After 35 years, Ecuador has abandoned its refusal to recognize the Rio de Janeiro Protocol, as is clear from the Itamaraty Peace Declaration and the Montevideo Peace Declaration, and has undertaken to begin discussions, with the cooperation of the guarantor countries of the Rio de Janeiro Protocol, with a view to finding a permanent solution to the remaining impasses in order to complete the demarcation process which was unilaterally interrupted by Ecuador.

However, the insistence of the Permanent Representative of Ecuador that alleged differences with Peru remain with regard to territorial matters makes it clear that, after accepting the Rio de Janeiro Protocol, his Government has no real desire to rectify the situation, but, instead, is trying to find a new way of avoiding the obligations it assumed in signing that treaty. In this respect, it is a matter of concern to Peru that Ecuador, violating the agreed confidentiality of the ongoing process, has announced its rejection of the recommendation on a demilitarized zone which was made simultaneously to Peru and Ecuador by the Military Observer Mission of the Guarantor States in fulfilment of paragraph 3 of the Itamaraty Peace Declaration, a proposal which was immediately accepted by my Government.

There is neither a legal problem nor a territorial problem between Peru and Ecuador but a situation resulting from the many occasions on which Ecuador has modified its position with regard to the Protocol in order to impede the demarcation of a small section of the border.

The definitive solution to the "remaining impasses" between our countries which, in accordance with paragraph 6 of the Itamaraty Declaration of Peace between Ecuador and Peru, must be found by the parties with the assistance of the guarantor countries, will have to conform with international law and fully

respect the 1942 Rio de Janeiro Protocol and the Días de Aguiar arbitral ruling of 14 July 1945.

Lastly, while requesting that this letter be circulated as a document of the General Assembly, under agenda item 74, and of the Security Council, I wish to reiterate my Government's opinion, set forth in my letter of 15 March 1995 (A/49/864-S/1995/201), that we believe it to be inappropriate, unwarranted and contrary to the interests of small States to make use of an agenda item which was proposed for other purposes and, in an opportunistic manner, to seek to legitimize violent acts which are contrary to the bilateral border treaties that have been signed and ratified and to international law in general, such as the aggression perpetrated by Ecuador through the infiltration of its troops into the Peruvian territories of Alto Cenepa and the "evacuation" operation which, according to the "war dispatch" of the Commander-in-Chief of the Ecuadorian Army, was carried out on 26 January 1995.

It is relevant to note in this respect that the acts concerned have all the basic characteristics established in General Assembly resolution 3314 (XXIX), on the Definition of Aggression and its modalities.

(Signed) Fernando GUILLEN
Permanent Representative